

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 (KBO)

Hearing Date: April 10, 2024 at 1:00 p.m. (ET)

Objection Deadline: April 3, 2024 at 4:00 p.m. (ET)

**MOTION OF MEDLEY LLC LIQUIDATING TRUST FOR ENTRY OF
(I) A PROTECTIVE ORDER, AND (II) AN ORDER EXPRESSLY
ALLOWING THE LIQUIDATING TRUST TO PRODUCE DOCUMENTS TO
LOWENSTEIN SANDLER, LLP IN RESPONSE TO A SUBPOENA**

The Medley LLC Liquidating Trust (the “Liquidating Trust”), established by the confirmed combined disclosure statement and plan (the “Plan”)² in this case (the “Case”) of the above-captioned debtor (the “Debtor”), by and through its undersigned counsel, hereby files this motion seeking entry of an order, substantially in the form attached hereto as **Exhibit A**, (i) protecting the disclosure of confidential and potentially privileged information that the Liquidating Trust intends to produce to Lowenstein Sandler, LLP (“Lowenstein”) in response to the document subpoena served on the Liquidating Trust by Lowenstein in connection with an action pending in the New York State Supreme Court, Commercial Division, captioned *Medley Management Inc. v. Lowenstein Sandler, LLP, et al.*, Index No. 651987/2022 (N.Y. Sup. Ct.) (the “New York Action”), and (ii) expressly allowing the Liquidating Trust to produce documents to Lowenstein in response to its subpoena, and protecting the Liquidating Trust from liability for such production

¹ The Debtor’s current mailing address is c/o Medley LLC Liquidating Trust, c/o Saccullo Business Consulting, LLC, 27 Crimson King Drive, Bear, DE 19701.

² Docket No. 445-1.



(collectively, the “Motion”). In support of the Motion, the Liquidating Trust respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Liquidating Trust requests an order that will protect the confidentiality and potentially privileged nature of documents (the “Protective Order”)³ that it intends to produce without incurring a costly document by document review in response to the subpoena it received from Lowenstein requesting documents related to a state court malpractice action brought by the Debtor’s former parent, Medley Management Inc. (“MDLY”), against Lowenstein, in its capacity as the Debtor’s and/or MDLY’s former counsel.

2. A Protective Order is necessary because the Liquidating Trust possesses not only the Debtor’s documents but also documents that may belong to the Debtor’s former parent, subsidiaries, and affiliates (collectively, the “Legacy Medley Entities”), which were all intermingled on the Debtor’s network and servers. Given their intermingled nature, and the entities’ use of common email domains, there is no feasible way to separate these documents relative to each entity for purposes of production to Lowenstein or otherwise. Thus, the Liquidating Trust’s anticipated production of documents may, and likely does, contain confidential and potentially privileged information, including without limitation certain protected data including personally identifiable information, personal health information, and data subject to applicable state, Federal, and foreign data privacy regulations, that may belong to one or more of

³ The Protective Order is substantially in the form of the Stipulation and Order for the Production and Exchange of Confidential Information that the New York Supreme Court entered on August 18, 2023 in the New York Action. *See* New York Action, NYSCEF No. 107 (the “Confidentiality Order”).

the Legacy Medley Entities, including without limitation, one or more of the legacy investment fund vehicles managed by the Debtor's subsidiaries and affiliates and the legacy investors therein.

3. The Liquidating Trust also requests entry of an order that will expressly allow the Liquidating Trust to produce documents to Lowenstein without a document by document review subject to the Protective Order, thereby protecting the Liquidating Trust from any subsequent liability for its production of documents pursuant to the Protective Order (the "Production Order") and together with the Protective Order, the "Requested Orders").

4. The Production Order is necessary to protect the Liquidating Trust from costly potential litigation concerning the Liquidating Trust's disclosure of confidential or potentially privileged information even if the Protective Order is entered, and to minimize the risk of costly potential litigation concerning the Liquidating Trust's compliance with the subpoena.

5. Entry of both the Protective Order and the Production Order is necessary to allow the Liquidating Trust to comply with the subpoena in a cost-efficient manner, in order to preserve the Liquidating Trust's extremely limited financial resources. The Protective Order will protect the interests and rights of the Legacy Medley Entities, while the Production Order will protect the Liquidating Trust from follow-on litigation for producing documents in response to the Lowenstein subpoena.

JURISDICTION AND VENUE

6. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The statutory and other predicates for the relief requested herein are sections 105 and 1142 of the Bankruptcy Code, Section 26 of the Amended Order confirming the Plan (the “Confirmation Order”),⁴ and Articles XIV.e, XIV.i, and XIV.s of the Plan.

BACKGROUND

A. Bankruptcy Case

8. On March 7, 2021 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Court. On October 18, 2021, the Court entered the Confirmation Order, which went effective on the same day (the “Effective Date”).⁵

9. Among other things, the Plan provided for the creation of the Liquidating Trust, pursuant to the *Liquidating Trust Agreement* (ECF No. 371-1), to liquidate the remaining estate assets and pursue potential causes of action, which were transferred to the Liquidating Trust.⁶

10. Under the Liquidating Trust Agreement, the Liquidating Trust also took possession, custody, and control of the Debtor’s documents, server, and network. Section 2.3.2 of

⁴ Docket No. 445

⁵ Docket No. 449.

⁶ Plan at Article VII.

the Liquidating Trust Agreement provided that all “right, title and interest in and to the Liquidating Trust Assets, including all such assets held or controlled by third parties, are automatically vested in the Liquidating Trust.” In turn, the Plan defined “Liquidating Trust Assets” to include, among other things, “any other assets of the Debtor of any type or nature.” Plan art. I.A.

11. In taking possession of the Debtor’s documents, servers, and network, the Liquidating Trust also took possession of servers and a network containing documents that may belong to certain of the Legacy Medley Entities, because the Debtor and all other affiliates and subsidiaries shared only one network with multiple servers and drives.

12. The Plan also requires the Liquidating Trust to “retain and preserve all Records” and provides that the Liquidating Trust cannot “destroy or otherwise abandon any Records without seeking further authorization from the Bankruptcy Court after notice and an opportunity for hearing.” Plan art. XI.I. Likewise, section 3.6 of the Liquidating Trust Agreement provides that “any records (whether hard copy or electronic)” cannot be disposed of until the winding down of the Liquidating Trust.

13. The Plan also provided that “any non-Debtor subsidiary reserves all rights, if any, with respect to the Records, including, without limitation, ownership, possession, custody and control of such Records and all claims related to privilege or confidentiality.” Plan art. XI.I.

14. Section 26 of the Confirmation Order generally provides that the “Court shall retain and have exclusive jurisdiction of all matters in connection with, arising out of, or related to the Chapter 11 Case and the Combined Disclosure Statement and Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code.”

15. Section XIV of the Plan also provides that the “Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or relating to, the Chapter 11 Case and

the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code,” including specifically to “adjudicate, decide, or resolve any motions . . . instituted by the Liquidating Trustee,” art. XIV.e, “resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with . . . any Entity’s obligations incurred in connection with the Plan,” art. XIV.i, and “hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan,” art. XIV.s.

16. The Liquidating Trust has limited remaining financial resources that are meant to allow it to wind-down the Debtor’s estate.

B. The Subpoena

17. On April 29, 2022, MDLY, a holding company that prior to the Effective Date owned 98% of the ownership units in Debtor Medley LLC, filed a complaint in the Commercial Division of the New York State Supreme Court against Lowenstein and certain of its attorneys during the relevant time period. Lowenstein represented the Debtor in this Chapter 11 Case and sought to be retained as the Debtor’s bankruptcy counsel. On May 27, 2021, the Debtor withdrew its *Application for Entry of An Order Authorizing the Employment and Retention of Lowenstein Sandler LLP as Counsel to the Debtor*. See ECF No. 181.

18. MDLY’s complaint asserts a malpractice claim against Lowenstein relating to Lowenstein’s representation of MDLY and/or the Debtor in connection with the Debtor’s chapter 11 proceedings. MDLY seeks, among other things, actual, consequential, and punitive damages.

19. As part of its defense, Lowenstein initially sought production of documents from MDLY. MDLY directed Lowenstein to the Liquidating Trust as custodian of the Debtor’s assets and, due to the historic intermingling of all electronic data, documents over which MDLY

claims ownership. On or about September 22, 2023, Lowenstein served a subpoena on the Liquidating Trust (the “Subpoena”) issued by the Delaware Superior Court, demanding production of thirty-seven categories of documents.

20. On October 16, 2023, the Liquidating Trust served its responses and objections to the Subpoena. The Liquidating Trust raised several objections, including that MDLY had objected to the Subpoena on various grounds and that the Liquidating Trust did not have available funds to incur the expense of a costly document review and production. Primarily on that basis, the Liquidating Trust informed Lowenstein that it would not produce any documents at that time. That same day, MDLY filed a motion for protective order and/or to quash the Subpoena in the New York Action.

21. Following MDLY’s withdrawal of its motion to quash on January 16, 2024, and after several meet and confers with Lowenstein, the Liquidating Trust and Lowenstein reached an agreement – subject to Court approval – for the Liquidating Trust to produce documents in a streamlined and cost-efficient manner that would not significantly deplete the Liquidating Trust’s limited financial resources.

22. The Liquidating Trust and Lowenstein agreed for the Liquidating Trust to produce, without reviewing any emails or documents for relevance or privilege, the custodial files that the Liquidating Trust has for the following targeted periods and MDLY-affiliated custodians relevant to the New York Action (collectively the “Subpoena Documents”):

- From October 1, 2020 through February 28, 2022 (inclusive)
 - Brook Taube
 - Seth Taube
 - John Fredericks

- From October 1, 2020 through October 17, 2021 (inclusive)
 - Richard Allorto
 - Nathan Bryce
 - Samuel Anderson
 - Dean Crowe
 - Howard Liao

23. Lowenstein has agreed to treat all Subpoena Documents produced by the Liquidating Trust as “Confidential” pursuant to the Confidentiality Order in the New York Action.

24. The only remaining issue, which the Liquidating Trust submits warrants this Court’s intervention, is entry of the Requested Orders, seeking to protect the confidentiality and privilege (if any) of any of the Subpoena Documents produced by the Liquidating Trust to the extent those documents implicate such rights held by the Legacy Medley Entities, or other third-parties whose personally identifiable information may be included in the Subpoena Documents.

RELIEF REQUESTED

25. The Plan and Liquidating Trust Agreement vested possession, custody, and control of the Debtor’s documents, server, and network in the Liquidating Trust.

26. As a practical matter, the Debtor’s documents historically were intermingled with the documents of MDLY and the Debtor’s non-debtor subsidiaries, including without limitation one or more of the legacy investment fund vehicles managed by the Debtor’s subsidiaries and affiliates and the legacy investors therein, because the Legacy Medley Entities shared the Debtor’s network and server. Consequently, the Liquidating Trust now has possession, custody, and control of emails and documents that may belong to the Debtor’s non-debtor affiliates. Section XI.I of the Plan provided that non-debtor subsidiaries “reserve[] all rights, if

any, with respect to the Records, including, without limitation, ownership, possession, custody and control of such Records and all claims related to privilege or confidentiality.”

27. The Liquidating Trust has determined that the most cost-efficient way to comply with the Subpoena is to produce, without a costly document-by-document review, the Subpoena Documents listed above.

28. In order to protect the rights that the Legacy Medley Entities may have in the Subpoena Documents and the Liquidating Trust from liability for its good-faith production of such documents, the Liquidating Trust requests entry of the (i) Protective Order, which will protect the disclosure of confidential and privileged information, if any; and (ii) the Production Order, which will expressly allow the Liquidating Trust to produce the Subpoena Documents to Lowenstein and protect the Liquidating Trust from liability for doing so.

NOTICE

29. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) counsel to Medley Management, Inc., Alan Frank (afrank@alflaw.net), Samantha Millrood (smillrood@alflaw.net); (c) counsel to Lowenstein & Sandler LLP, Robert Malioneck (Robert.Malioneck@lw.com), Zachary F. Proulx (Zachary.Proulx@lw.com), Lemay Diaz (Lemay.Diaz@lw.com); (d) counsel to Debtor’s non-debtor affiliates, Justin Rawlins (justinrawlins@paulhastings.com), Timothy D. Reynolds (timothyreynolds@paulhastings.com), Yousuf Dhamee (yousufdhamee@paulhastings.com); (e) counsel to the U.S. Securities and Exchange Commission, William M. Uptegrove (uptegrovew@sec.gov) and Theresa A. Scheuer (scheuert@sec.gov); (f) Medley Capital Corporation n/k/a PhenixFIN Corporation (dlorber@phenixfc.com) and its counsel George M. Silfen (GSilfen@kramerlevin.com) and Nathan Wolfe (NWolfe@kramerlevin.com); and (g) any party filing a request for notice pursuant

to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Liquidating Trust submits that no other or further notice is necessary or required under the circumstances.

NO PRIOR REQUEST

30. No previous motion for the relief sought herein has been made to this or any other Court.

CONCLUSION

WHEREFORE, the Liquidating Trust respectfully requests that the Court grant the Motion, and provide for such other and further relief as the Court deems appropriate.

Dated: March 27, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Christopher M. Samis

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Sameen Rizvi (No. 6902)

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Counsel for the Liquidating Trust

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 (KBO)

Hearing Date: April 10, 2024 at 1:00 p.m. (ET)

Objection Deadline: April 3, 2024 at 4:00 p.m. (ET)

**NOTICE OF MOTION OF MEDLEY LLC LIQUIDATING TRUST
FOR ENTRY OF (I) A PROTECTIVE ORDER, AND (II) AN ORDER EXPRESSLY
ALLOWING THE LIQUIDATING TRUST TO PRODUCE DOCUMENTS TO
LOWENSTEIN SANDLER, LLP IN RESPONSE TO A SUBPOENA**

PLEASE TAKE NOTICE that the Medley LLC Liquidating Trust (the “Liquidating Trust”) established in the above-captioned case filed the *Motion of Medley LLC Liquidating Trust for Entry of (I) a Protective Order, and (II) an Order Expressly Allowing the Liquidating Trust to Produce Documents to Lowenstein Sandler, LLP in Response to a Subpoena* (the “Motion”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 and served upon and received by the undersigned counsel on or before **April 3, 2024 at 4:00 p.m. (ET)** (the “Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that, if any objections or responses are received, a hearing with respect to the Motion will be held on **April 10, 2024 at 1:00 p.m. (ET)** before The Honorable Karen B. Owens, United States Bankruptcy Judge, at the Court, 824 Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801.

¹ The Debtor’s current mailing address is c/o Medley LLC Liquidating Trust, c/o Saccullo Business Consulting, LLC, 27 Crimson King Drive, Bear, DE 19701.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: March 27, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Christopher M. Samis

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Counsel for the Liquidating Trust

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 (KBO)

Re: Docket No. ____

**ORDER (I) ENTERING A PROTECTIVE ORDER, AND (II) EXPRESSLY
ALLOWING THE LIQUIDATING TRUST TO PRODUCE DOCUMENTS TO
LOWENSTEIN SANDLER, LLP IN RESPONSE TO A SUBPOENA**

Upon the Motion dated March 27, 2024 (the "Motion") of the Medley LLC Liquidating Trust, for entry of an order (i) protecting the disclosure of confidential and potentially privileged information that the Liquidating Trust intends to produce to Lowenstein Sandler, LLP in response to its document subpoena, and (ii) expressly allowing the Liquidating Trust to produce documents to Lowenstein Sandler, LLP in response to its subpoena, and protecting the Liquidating Trust from liability for such production; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S. C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having being provided to the parties identified in the Certificate of Service filed with the Motion, and it appearing that no other or further notice need be provided; and the Court having considered the objections, if any, filed in opposition of the Motion; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its creditors, the estate, and all parties in interest; and the Court having determined that the legal

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and factual basis set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore, it is

1. ORDERED that the Motion is GRANTED; and it is further
2. ORDERED that the order for the production and exchange of confidential information (“Protective Order”) attached hereto **Exhibit A** and incorporated by reference and made part of this Order as if fully set forth herein; and it is further
3. ORDERED that Medley LLC Liquidating Trust shall produce the Subpoena Documents, as defined in the Motion, to Lowenstein Sandler, LLP in response to its subpoena subject the Protective Order; and it is further
4. ORDERED that the Medley LLC Liquidating Trust shall not be liable to any third party for producing documents to Lowenstein Sandler, LLP in accordance with this Order; and it is further
5. ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to implementation, interpretation and/or enforcement of this Order; provided that, for the avoidance of doubt, this retention of jurisdiction shall not extend to enforcement of the document subpoena by Lowenstein Sandler, LLP; and it is further
6. ORDERED that this Court shall retain exclusive jurisdiction to determine disputes related to the alleged confidentiality or privilege of the Subpoena Documents, as defined in the Motion, involving documents or information of the Medley LLC Liquidating Trust or the Legacy Medley Entities, as defined in the Motion; provided, however, that any disputes related to the alleged confidentiality or privilege of the Subpoena Documents, as defined in the Motion, involving documents or information in which the following entities or their successors assert an

interest in confidentiality or privilege shall be heard and determined by the State Court in conformance with the procedures of the Protective Order: (a) Medley Management Inc.; (b) Medley Opportunity Fund II LP; (c) Medley Opportunity Fund III LP; (d) Medley Opportunity Fund III (Cayman) Ltd.; (e) Medley Opportunity Fund Offshore III LP; (f) Sierra Income Corporation; and (g) Medley Capital Corporation.

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Medley LLC,²

Debtor.

Chapter 11

Case No. 21-10526 (KBO)

**ORDER FOR THE PRODUCTION AND
EXCHANGE OF CONFIDENTIAL INFORMATION**

1. This Order is entered to facilitate the production of documents and information by the Medley LLC Liquidating Trust in connection with the action, *Medley Management Inc. v. Lowenstein Sandler, LLP*, No. 651987/2022 (the “Action”), in the Commercial Division of the New York State Supreme Court (the “State Court”), that merit confidential treatment (hereinafter the “Documents” or “Testimony”).

2. Any Party to the Action (a “Party”) or, as appropriate, non-party, including the Medley LLC Liquidating Trust, may designate Documents produced, or Testimony given, by the Medley LLC Liquidating Trust in connection with the Action as “confidential” or “highly confidential — attorney’s eyes only” either by notation on each page of the Document so designated, statement on the record of the deposition, or written advice to the respective counsel for the Parties to the Action, or by other appropriate means.

3. As used herein:

a. “Confidential Information” shall mean all Documents and Testimony produced by the Producing Party, and all information contained therein, if such Documents or Testimony

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contain trade secrets, proprietary business information, commercially or competitively sensitive information, information required by law or contract to be kept confidential or other information the disclosure of which would, in the good faith judgment of the Party or, as appropriate, non-party designating the material as confidential, be detrimental to the conduct of that Party's or non-party's business or the business of any of that Party's or non-party's customers or clients.

b. "Highly Confidential — Attorney's Eyes-Only Information" shall mean any Confidential Information produced by the Producing Party that is of such a private, sensitive, competitive or proprietary nature that present disclosure to persons other than those identified in paragraph 5.1 below would reasonably be expected to cause irreparable harm or materially impair the legitimate competitive position or interests of the Producing Party or those of its customers or clients. A designation of Confidential Information as "Highly Confidential — Attorney's Eyes-Only Information" constitutes a representation that such Confidential Information has been reviewed by an attorney for the designating Party or non-party and that there is a valid basis for such a designation.

c. "Producing Party" shall mean the Medley LLC Liquidating Trust.

d. "Receiving Party" shall mean the Parties to the Action and/or any non-party receiving Confidential Information or "Highly Confidential — Attorney's Eyes-Only Information" produced by the Producing Party in connection with depositions, document production, subpoenas or otherwise.

4. The Receiving Party may, at any time, notify the designating Party or non-party that the Receiving Party does not concur in the designation of a document or other material produced by the Producing Party as Confidential Information or "Highly Confidential — Attorney's Eyes-Only Information." The Receiving Party and Producing Party shall meet and

confer within fourteen (14) days after such notification by the Receiving Party and shall attempt to resolve the dispute in good faith. If the Producing Party does not agree to declassify such document or material within seven (7) days after such conference (or within such other time as the Receiving Party and Producing Party may agree on), such documents or materials shall continue to be treated as “Confidential Information” or “Highly Confidential — Attorney’s Eyes-Only Information,” as applicable, subject to the Receiving Party’s ability, in accordance with the procedures set forth in Paragraph 12 hereof and the State Court’s Part 3 Sealing Practices & Procedures, to oppose any motion to seal and/or redact such documents or materials in connection with the filing of such documents or materials with the State Court. The documents or other materials shall be deemed as designated by the Producing Party unless and until the State Court or, solely for those disputes the Bankruptcy Court has retained jurisdiction over, the Bankruptcy Court, rules otherwise. Notwithstanding anything herein to the contrary, the Producing Party bears the burden of establishing the propriety of its designation of documents or information as Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information.”

5. Except with the prior written consent of the Producing Party or by Order of the State Court or, solely for those disputes the Bankruptcy Court has retained jurisdiction over, the Bankruptcy Court, Confidential Information produced by the Producing Party shall not be furnished, shown or disclosed to any person or entity except to:

a. personnel of the Parties actually engaged in assisting in the preparation of the Action for trial or other proceeding herein and who have been advised of their obligations hereunder;

b. Outside and in-house counsel for the Parties to the Action and their associated attorneys, paralegals and other professional and non-professional personnel (including support

staff) who are directly assisting such counsel in the preparation of the Action for trial or other proceeding herein, are under the supervision or control of such counsel, and who have been advised by such counsel of their obligations hereunder;

c. expert witnesses or consultants, and their staff, retained by the Parties or their counsel to furnish technical or expert services in connection with the Action or to give testimony with respect to the subject matter of the Action at the trial of the Action or other proceeding herein; provided, however, that such Confidential Information is furnished, shown or disclosed in accordance with paragraph 7 hereof;

d. Outside vendors or contractors engaged by a Party or its counsel to provide copying, electronic discovery, graphics, trial support, or similar services, to the extent deemed reasonably necessary by outside or in-house counsel for the Party, and who have been advised by such counsel of their obligations hereunder;

e. the State Court, Bankruptcy Court, and court personnel;

f. an officer before whom a deposition is taken in the Action, including stenographic reporters and videographers and any necessary secretarial, clerical or other personnel of such officer;

g. trial and deposition witnesses if furnished, shown or disclosed during deposition, hearing or trial, in accordance with paragraphs 9 and 10, respectively, hereof;

h. the authors or addressees of the Confidential Information;

i. The Parties' insurer(s) and such insurer(s) outside and in-house counsel; and

j. any other person agreed to by the Producing Party.

5.1 Except with the prior written consent of the Producing Party or by Order of the State Court, or, solely for those disputes the Bankruptcy Court has retained jurisdiction over, the

Bankruptcy Court, “Highly Confidential — Attorney’s Eyes-Only Information” produced by the Producing Party shall not be furnished, shown or disclosed to any person or entity except to those identified in paragraphs 5(b)-5(j).

6. Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” shall be utilized by the Receiving Party and its counsel only for purposes of the Action and for no other purposes. Notwithstanding anything to the contrary in this Order, nothing in this Order shall limit the Producing Party’s use of its own Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information.”

7. Before any disclosure of Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” produced by the Producing Party is made to an expert witness or consultant, or their staff, pursuant to paragraph 5(c) thereof, counsel for the Receiving Party making such disclosure shall provide to the expert witness, consultant or staff member a copy of this Order and the Confidentiality Order entered in the Action (NYSCEF No. 107), and obtain the expert’s, consultant’s or staff member’s written agreement, in the form of Exhibit A attached to the Confidentiality Order enter in the Action (NYSCEF No. 107), to comply with and be bound by its terms. Counsel for the Receiving Party obtaining the certificate shall supply a copy to counsel for the other Parties at the time designated for expert disclosure, except that any certificate signed by an expert or consultant who is not expected to be called as a witness at trial is not required to be supplied.

8. Unless otherwise designated during the deposition, all depositions of the Producing Party shall presumptively be treated as Confidential Information and subject to this Order during the deposition and for a period of fifteen (15) days after a transcript of said deposition is received

by counsel for each of the Parties. At or before the end of such fifteen day period, the deposition shall be classified appropriately.

9. Should the need arise for any Party or, as appropriate, non-party, to disclose Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” produced by the Producing Party during any hearing or trial before the State Court, including through argument or the presentation of evidence, such Party or, as appropriate, non-party may do so only after taking such steps as the State Court shall deem necessary to preserve the confidentiality of such Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information.”

10. This Order shall not preclude counsel for any Party from using during any deposition in the Action any Documents or Testimony which have been designated as Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” under the terms hereof. Any deposition witness who is given access to Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” produced by the Producing Party shall, prior thereto, be provided with a copy of this Order and the Confidentiality Order entered in the Action (NYSCEF No. 107), and shall execute a written agreement, in the form of Exhibit A attached to the Confidentiality Order entered in the Action (NYSCEF No. 107), to comply with and be bound by its terms. Counsel for the Party obtaining the certificate shall supply a copy to counsel for the other Parties and the Producing Party of such Confidential Information. In the event that, upon being presented with a copy of the Order and the Confidentiality Order entered in the Action (NYSCEF No. 107), a witness refuses to execute the agreement to be bound by its terms, the State Court shall, upon application, enter an order directing the witness’s compliance with the Confidentiality Order entered in the Action (NYSCEF No. 107).

11. A Party or, as appropriate, non-party, may designate as Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” subject to this Order any document, information, or deposition testimony produced or given by the Producing Party, or any portion thereof. In the case of Documents produced by the Producing Party, designation shall be made by notifying all counsel to the Action in writing of those documents which are to be stamped and treated as such at any time up to fifteen (15) days after actual receipt of copies of those documents by counsel for the Party asserting the confidentiality privilege. In the case of deposition Testimony produced by the Producing Party, designation shall be made by notifying all counsel to the Action in writing of those portions which are to be stamped or otherwise treated as such at any time up to fifteen (15) days after the transcript is received by counsel for the Party (or, as appropriate, non-party) asserting the confidentiality. Prior to the expiration of such fifteen (15) day period (or until a designation is made by counsel to a Party, if such a designation is made in a shorter period of time), all such Documents and Testimony shall be treated as Confidential Information.

12.

a. A Party or, as appropriate, non-party, who seeks to file with the State Court (i) any deposition transcripts, exhibits, answers to interrogatories, or other documents which are designated under this Order as comprising or containing Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” produced by the Producing Party, or (ii) any pleading, brief or memorandum which reproduces, paraphrases or discloses Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” produced by the Producing Party shall file the document, pleading, brief, or memorandum on the NYSCEF system in redacted or sealed form and shall contemporaneously file a motion to seal and/or redact such Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” in

accordance with the State Court's Part 3 Sealing Practices & Procedures. Consistent with Rule 1.b.ii of the State Court's Part 3 Sealing Practices & Procedures, unless otherwise agreed to by the Producing Party, the proposed Order to Show Cause filed in connection with such motion shall include a request for interim relief using the following or substantially similar language: "It is further ORDERED that pending the hearing on this Order to Show Cause, NYSCEF Doc. No. [Insert Document Number(s)] will remain temporarily under seal, accessible only to the parties, their counsel, and court personnel." For the avoidance of doubt, the Party or non-party making the filing shall not publicly file the Confidential Information or "Highly Confidential — Attorney's Eyes-Only Information" produced by the Producing Party until the State Court renders a decision on the motion to seal and/or redact (the "Redacted Filing").

b. In the event that the Party's (or, as appropriate, non-party's) filing includes Confidential Information or "Highly Confidential — Attorney's Eyes-Only Information" produced by the Producing Party, the filing Party (or, as appropriate, non-party) shall so notify the Producing Party within twenty four (24) hours after the Redacted Filing by providing the Producing Party with a copy of the Redacted Filing as well as a version of the filing with the Producing Party's Confidential Information or "Highly Confidential — Attorney's Eyes-Only Information" unredacted.

c. If the Producing Party makes a timely motion to seal and/or redact, or timely supports the filing Party's (or, as appropriate, non-party's) motion to seal and/or redact, and the motion is granted, the filing Party (or, as appropriate, non-party) shall ensure that all documents (or, if directed by the State Court, portions of documents) that are the subject of the order to seal are filed in accordance with the procedures that govern the filing of sealed documents on the NYSCEF system. If the Producing Party's timely motion to seal and/or redact is denied, then the

Party (or, as appropriate, non-party) making the filing shall take steps to replace the Redacted Filing with its corresponding unredacted version.

d. Any Party filing a Redacted Filing in accordance with the procedure set forth in this paragraph 12 containing Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” produced by the Producing Party, shall, contemporaneously with or prior to making the Redacted Filing, provide the other Parties and the State Court with a complete and unredacted version of the filing.

e. All pleadings, briefs or memoranda which reproduce, paraphrase or disclose any materials produced by the Producing Party which have previously been designated as comprising or containing Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” under this Order shall identify such documents by the production number ascribed to them at the time of production (if any).

13. Any person receiving Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” produced by the Producing Party shall not reveal or discuss such information to or with any person not entitled to receive such information under the terms hereof and shall use reasonable measures to store and maintain the Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” so as to prevent unauthorized disclosure.

14. Any document or information that may contain Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” that has been inadvertently produced by the Producing Party without identification as to its “confidential” nature as provided in paragraphs 2 and/or 11 of this Order, may be so-designated by the Party or non-party asserting the confidentiality privilege by written notice to the counsel for the Receiving Party identifying the

document or information as “confidential” within a reasonable time following the discovery that the document or information has been produced by the Producing Party without such designation.

15. Extracts and summaries of Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” produced by the Producing Party shall also be treated with the same level of confidentiality as the designated information from which it was derived.

16. The production or disclosure of Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” by the Producing Party shall in no way constitute a waiver of the Producing Party’s right to object to the production or disclosure of other information in the Action or in any other action. Nothing in this Order shall operate as an admission by any Party or non-party that any particular document or information produced by the Producing Party is, or is not, Confidential Information or “Highly Confidential Attorney’s-Eyes Only.” Failure to challenge a Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” designation by the Producing Party shall not preclude a subsequent challenge thereto.

17. Upon request by the Producing Party for the return of specific documents that are protected from disclosure pursuant to CPLR 3101(c), 3101(d)(2) and 4503 (“Protected Information”) produced by the Producing Party, the Receiving Party shall promptly return the Protected Information and destroy all copies thereof. Furthermore, the Receiving Party shall not challenge either the adequacy of the Producing Party’s document review procedure or its efforts to rectify the error, and the Receiving Party shall not assert that its return of the produced Protected Information has caused it to suffer prejudice.

18. Any production by the Producing Party of documents or information subject in whole or in part to the attorney-client privilege, work product protection or any other applicable privilege, protection, or immunity from disclosure (“Privileged Material”) shall not constitute a

waiver or forfeiture of, or estoppel as to, any claim of privilege, protection, or immunity by the Producing Party in the Action or in any other proceeding under any circumstances to the full extent of Rule 502(d) of the Federal Rules of Civil Procedure. If the Producing Party produces documents or information that it believes in good faith contain Privileged Material, the Producing Party may notify the Receiving Party that such production contained Privileged Material, identify the Privileged Material and demand the immediate return thereof. Upon notice of such demand, the Receiving Party shall promptly take all reasonable steps to destroy and/or return to the Producing Party the specified information and any copies thereof in its possession, custody or control; shall promptly take all reasonable steps to retrieve the specified information from other persons if the Receiving Party disclosed it to such persons before being receiving such notice; and shall not use or disclose the specified information until any dispute regarding the claim of privilege or protection as to the specified information is resolved. If the Receiving Party disputes the claim of privilege or protection, the Receiving Party shall notify the Producing Party of the basis for the dispute within fifteen (15) days after the receipt of the Producing Party's notice, and the Receiving Party and Producing Party shall promptly thereafter meet and confer regarding the dispute; provided that the Receiving Party shall not rely on the Producing Party's production of Privileged Material as a basis for disputing the claim of privilege or protection. If the Receiving Party and Producing Party cannot resolve the dispute, either may seek a determination from the State Court or, solely for those disputes the Bankruptcy Court has retained jurisdiction over, the Bankruptcy Court, as to the claim or privilege or protection in accordance with such court's rules and procedures governing discovery motions, or as otherwise ordered by the State Court or Bankruptcy Court, as appropriate, and the Producing Party shall preserve the specified information until the dispute is resolved.

19. This Order is entered into without prejudice to the right of any Party or non-party to seek relief from, or modification of, this Order or any provisions thereof by properly noticed motion to the Bankruptcy Court or to challenge any designation of confidentiality as inappropriate under the Civil Practice Law and Rules, Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, or other applicable law.

20. This Order shall continue to be binding after the conclusion of the Action except (a) that there shall be no restriction on documents produced by the Producing Party that are used as exhibits in the State Court (unless such exhibits were filed under seal); and (b) that a Receiving Party may seek the written permission of the Producing Party or further order of the Bankruptcy Court with respect to dissolution or modification of this Order. The provisions of this Order shall, absent prior written consent of the Parties, continue to be binding after the conclusion of the Action.

21. Nothing herein shall be deemed to waive any privilege recognized by law, or shall be deemed an admission as to the admissibility in evidence of any facts or documents revealed in the course of disclosure.

22. Unless otherwise ordered by the State Court or, solely for those disputes the Bankruptcy Court has retained jurisdiction over, the Bankruptcy Court, or agreed to in writing by the Producing Party, within sixty (60) days after the final termination of the Action by settlement or exhaustion of all appeals, all Receiving Parties in receipt of Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” produced by the Producing Party, or any reproductions thereof, shall use reasonable efforts to either return such materials and copies thereof to the Producing Party or, at the Receiving Party’s option, shall destroy such Confidential Information. In the event that any Receiving Party chooses to destroy such Confidential

Information, such Party shall certify in writing within sixty (60) days of the final termination of the Action that it has undertaken its best efforts to destroy such Confidential Information, and that such Confidential Information have been destroyed to the best of its knowledge. The Receiving Party's reasonable efforts shall not require the return or destruction of such Confidential Information from (i) disaster recovery or business continuity backups, (ii) data stored in back-end databases critical to application operability and system-generated temporary folders, (iii) archived data with limited end-user accessibility, or (iv) material that is subject to legal hold obligations or commingled with other such material. Backup storage media need not be restored for purposes of returning or certifying destruction of such Confidential Information, but any such retained Confidential Information shall continue to be treated in accordance with this Order and destroyed in due course. Notwithstanding anything to the contrary, counsel of record for the Parties in the Action may retain one copy of documents constituting work product, a copy of pleadings (and exhibits thereto), motion papers, expert reports, legal memoranda, correspondence among such counsel, discovery responses, deposition transcripts and deposition and trial exhibits that contain or refer to Confidential Information produced by the Producing Party, provided that such counsel and employees of such counsel shall not disclose such Confidential Information to any other person, except pursuant to court order. This Order shall not be interpreted in a manner that would violate any applicable rules of professional conduct. Nothing in this Order shall prohibit or interfere with the ability of counsel for any Receiving Party, or of experts specially retained for the Action, to represent any individual, corporation or other entity adverse to any Party or non-party or their affiliate(s) in connection with any other matter.

23. If a Receiving Party is called upon to produce Confidential Information or "Highly Confidential — Attorney's Eyes-Only Information" produced by the Producing Party in order to

comply with a court order, subpoena, or other direction by a court, administrative agency, or legislative body, the Receiving Party from which the Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information” is sought shall (a) give written notice by overnight mail and email to the counsel for the Producing Party within five (5) business days of receipt of such order, subpoena, or direction, and (b) give the Producing Party seven (7) business days to object to the production of such Confidential Information or “Highly Confidential — Attorney’s Eyes-Only Information,” if the Producing Party so desires. Notwithstanding the foregoing, nothing in this paragraph shall be construed as requiring any Party or non-party to subject itself to any penalties for noncompliance with any court order, subpoena, or other direction by a court, administrative agency, or legislative body.

24. This Order may be changed by further order of the Bankruptcy Court, and is without prejudice to the rights of a Party or non-party to move for relief from any of its provisions, or to seek or agree to different or additional protection for any particular material or information.